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Electronic Commerce

The Trans-Pacific Partnership (TPP) levels the playing field for American workers and American businesses, leading to more Made-in-America exports and more higher-paying American jobs here at home. By cutting over 18,000 taxes different countries put on Made-in-America products, TPP makes sure our farmers, ranchers, manufacturers, service suppliers, and small businesses can compete—and win—in some of the fastest growing markets in the world. With more than 95 percent of the world’s consumers living outside our borders, TPP will significantly expand the export of Made-in-America goods and services and support American jobs.

EXECUTIVE SUMMARY

TPP will help preserve the open Internet and prevent its breakup into multiple, balkanized networks in which data flows are more expensive and more frequently blocked. The Electronic Commerce chapter will ensure the free flow of data (subject to public-interest regulation, for example to prevent

spam, protect privacy, and fight cyber-crime); prevent the spread of ‘forced localization’ of technologies and servers; and help to more effectively guarantee the security and privacy of internet users. All this will help to unlock the promise of digital trade through rules that keep the Internet free and open, set digital trade rules-of-the-road, and provide the incentives and a stable framework that can nurture a healthy environment for companies and individuals as they create and use content.

CHAPTER OVERVIEW

Cross-Border Data and Information Flows

TPP’s Electronic Commerce chapter includes commitments ensuring that companies and consumers can access and move data freely (subject to safeguards, such as for privacy), which will help ensure free flow of the global information and data that drive the Internet and the digital economy. These commitments, along with others on market access and national treatment, combine to help prevent unreasonable restriction, such as the arbitrary blocking of websites.

Location of Computing Facilities

The chapter includes guarantees that companies will not have to build expensive and unnecessarily redundant data centers in every market they seek to serve. The economies of scale of the digital economy, where capital- and energy-intensive data centers serve multiple countries, depend on this flexibility.

Customs Duties and Other Discriminatory Measures

The chapter prohibits the imposition of customs duties on digital products, to ensure that products distributed electronically, such as software, music, video, e-books, and games are not disadvantaged. A companion provision prevents TPP countries from favoring national producers or suppliers of such products through measures such as discriminatory taxation or outright blocking or other forms of content discrimination.

Consumer Protection and Privacy

To protect consumers, the chapter includes commitments by TPP Parties to adopt and maintain consumer protection laws related to fraudulent and de-

ceptive commercial activities online. It also includes commitments ensuring that privacy and other consumer protections can be enforced in TPP markets. Governments have different ways of implementing privacy protections, and TPP recognizes that diversity and promotes interoperability between diverse legal regimes. The chapter also includes provisions requiring Parties to have measures to stop unsolicited commercial electronic messages (spam).

Facilitating Electronic Transactions and Trading

To facilitate digital trade, the chapter includes provisions encouraging TPP countries to promote paperless trading between businesses and the government, such as customs forms being put in electronic format; as well as providing for electronic authentication and signatures for commercial transactions.

Software

The chapter prohibits requirements that force suppliers to share valuable software source code with foreign governments or commercial rivals when entering a TPP market.

Cooperation

The chapter ensures close cooperation among TPP Parties to help businesses, especially small- and medium-sized enterprises, overcome obstacles and take advantage of electronic commerce. It also encourages cooperation on policies regarding personal information protection, online consumer protection, cybersecurity threats and cybersecurity capacity, especially given the rise of cyber-attacks and the global diffusion of malware.

NEW FEATURES

As the Internet plays an increasingly vital role in global commerce, TPP will establish a framework of rules for digital trade in the Asia-Pacific that will benefit both businesses and consumers, and support U.S. economic growth, employment, and innovation. In addition to barring customs duties on digital products and building a consensus on other important commitments related to digital trade, the TPP's Electronic Commerce chapter includes significant new elements that reflect new technological developments and address concerns regarding electronic commerce that have emerged over the past several years. These include:

- First-ever commitments addressing the twin concerns over requirements that data be stored locally and prohibitions on the flow of data or information across borders. Together, these are among the most serious threats to an open Internet. These commitments will help guarantee that key inputs to digital trade are not arbitrarily impeded by governments, and reduce the threat of “balkanization” of the Internet.
- Ensuring that consumers have access to an open Internet, while requiring online consumer protection laws and ensuring that privacy and other consumer protections can be enforced.
- Encouraging cooperation of TPP countries on consumer protection, including privacy and cybersecurity.
- First-ever commitments underscoring the need to maintain consumer protection, for measures to stop unsolicited commercial electronic messages, and to ensure that privacy protections can be enforced in order to build consumer confidence and trust in the use of the Internet.
- Barring forced sharing of software code with governments or commercial rivals when entering a TPP market.
- Comprehensive commitments on cooperation related to digital trade, particularly to help small- and medium-sized enterprises take advantage of digital trade.
- First-ever commitments in an FTA on cooperation on cybersecurity threats and cybersecurity capacity, a significant problem, on which TPP countries will benefit from working collectively.

IMPACT

In the past six years, the world’s Internet-using population has nearly doubled from just over 1.5 billion to 3 billion, with the fastest rates of growth in developing regions like Southeast Asia. The TPP region is now home to close to 600 million Internet users, or almost one in every five global internet users. Transfers of data are rising even more rapidly: an estimated 80 terabytes of data per minute (equivalent to eight times the print content of the Library of Congress) now enters and leaves the United States, and this number grows rapidly each year as ever-faster broadband networks proliferate globally, the global fiber-optic cable network expands, and computer technologies improve.

Americans benefit from this in countless ways. An open Internet

makes us more able to access ideas, products, and entertainment—whether one of the billions of “apps” downloaded onto a smartphone, one of the billions of songs, movies, games or books downloaded or streamed onto a digital device, or one of the ubiquitous and now indispensable services digital consumers and businesses around the globe use every day. America’s leadership position in the areas of IT research, the Internet industry, and entertainment makes an open Internet a vastly important asset as we export ideas, digital products, and services to the world. The United States is home to the world’s most innovative companies in the digital environment. U.S. digitally-enabled service exports alone were nearly \$400 billion in 2011, up from \$273 billion in 2007, with small businesses in particular finding the Internet a uniquely powerful way to find customers and sell products worldwide. Over time, the Internet will help Americans take maximum advantage of our economy’s strengths in creativity and technology, enable tens of thousands of small businesses to participate in trade; and facilitate the emergence of non-traditional exporters in fields from health care to the arts and research labs.

However, the Internet is still new and there is a risk that countries could seek to regulate the digital environment in a way that jeopardizes a free and open internet. This would significantly undermine U.S. interests and innovation across the Asia-Pacific region, and would also do incalculable harm to future global growth and technological progress. That is why it is so important to ensure that these technologies remain open to new innovations, which TPP does by addressing, among other issues:

Barriers to cross-border data flows

Such data flows are the building blocks for all digital trade, and barriers to them are among the most serious impediments to the future of digital trade. Impediments to such flows affect not only technology companies, but almost every sector of the economy from manufacturing to farming and small businesses—all of which now depend on digital technology to provide the innovation and efficiency that drive economic growth.

Requirements that companies must store data locally

Such policies, which have been implemented in China and are being proposed by many other governments, undermine the architecture of the Internet, preventing the use of all “cloud” based services—from business software, to online music, e-mail, and travel services. They also affect the ability of companies, particularly small and medium-sized enterprises, to

use the Internet as a global platform for delivery of goods and services. This is because small and medium-sized enterprises, which need information from customers in all of their markets, are generally unable to afford to build data centers in every market they serve. Where data localization requirements are instituted, commitments to provide access to specific services on a cross-border basis can become all but meaningless. In addition, even if a company wants to invest in a foreign market, it may still want to use its data processing facilities established in the United States or elsewhere.

TPP's Electronic Commerce chapter, joining some of the world's most sophisticated Internet economies with rapidly growing developing nations across four continents, will answer these concerns as the most ambitious trade policy ever designed for the Internet and electronic commerce. Resting both on America's long-held commitment to the free flow of ideas and on the value of the future digital economy to American growth, prosperity, and employment, it will address the emerging challenges to the integrity and efficiency of the global Internet, ensuring that it remains an open space for commerce, that consumers and Internet users have confidence in regulation for privacy and security, and that electronic commerce achieves its vast future potential.

